



# **Incident Reporting**

## **NPRM 1010-AC57**

OOO Comments  
December 4, 2003  
Herndon, VA



# Incident Reporting Agenda

- Welcome & Introductions
- Meeting Purpose & Desired Outcome
- Historical Perspective of Incident Reporting
- Summary and Review of Industry Concerns
  
- HIPPA and Medical Records Issues
- Questions and Issues to Consider
- Industry Recommendations & Wrap Up
- Adjourn

Bud Danenberger  
Steve Brooks  
Mark Witten  
Gary Harrington  
Wanda Parker  
Bill Hedrick  
All  
Allen Verret



# **Incident Reporting Meeting Purpose**

- Review OOC comments
- Ensure MMS understands our concerns
- Answer any questions





# **Incident Reporting Historical Perspective**

- **NPRM MMS Subpart A**
  - Proposed rule published Jan 5, 1998
  - API/OOC comments July 1, 1998
  - Final rule Dec 28, 1999
- **USCG NOSAC Subcommittee**
  - Established April 22, 1998
  - Final report Nov 5, 1998
- **NPRM USCG Subpart N**
  - Proposed rule published Dec 7, 1999
  - OOC comments Sept 4, 2000



# **Incident Reporting**

## **Historical Perspective**

### **NPRM MMS Subpart A**

- OOC Comment
  - “incorporate recommendations of the USCG NOSAC Incident Reporting Subcommittee established on April 22, 1998 consisting of MMS, USCG and industry personnel”
- MMS Reply
  - “We deleted the accident reporting table at proposed § 250.120(a). We will propose a separate rule to establish a joint MMS-USCG web-based reporting system for incidents that have to be reported to either agency. We retained the current requirement at § 250.119(a) (§ 250.191).”



# **Incident Reporting**

## **Historical Perspective**

### **NPRM USCG Subchapter N**

- OOC Comment
  - “The USCG should delete this portion of the rulemaking and propose new rulemaking for incident reporting when the joint team completes their effort.”

# NOSAC Incident Reporting Subcommittee

Findings and Recommendations

# Team Members

- ◆ Staci Atkins - *MMS*
- ◆ Steve Brooks - *Exxon*
- ◆ David Dykes - *Taylor*
- ◆ Glenn Gipson/Steve Sheek - *Diamond Offshore Drilling*
- ◆ Gary Harrington - *Newfield*
- ◆ Chris O'Sullivan - *OMSA*
- ◆ LT Brian Penoyer - *USCG*
- ◆ Chuck Schoennagel Jr. - *MMS*
- ◆ CWO Mike White - *USCG*
- ◆ Jeff Wiese - *MMS*
- ◆ Mark Witten - *Chevron*



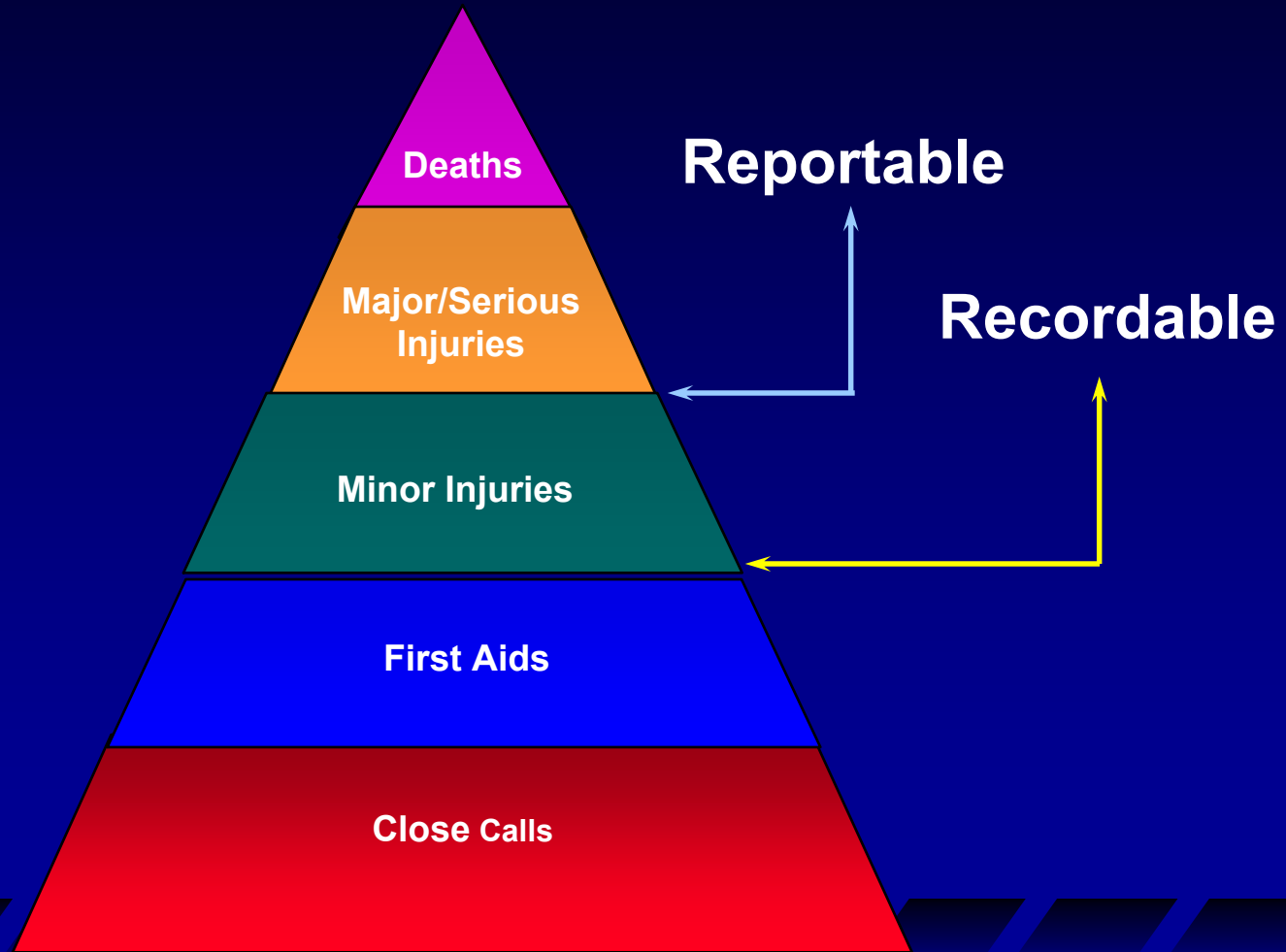
# Problem Statement

- ◆ Existing and proposed regulations for incident reporting to the USCG and MMS result in duplication of effort and the definitions and reporting requirements are not consistent.

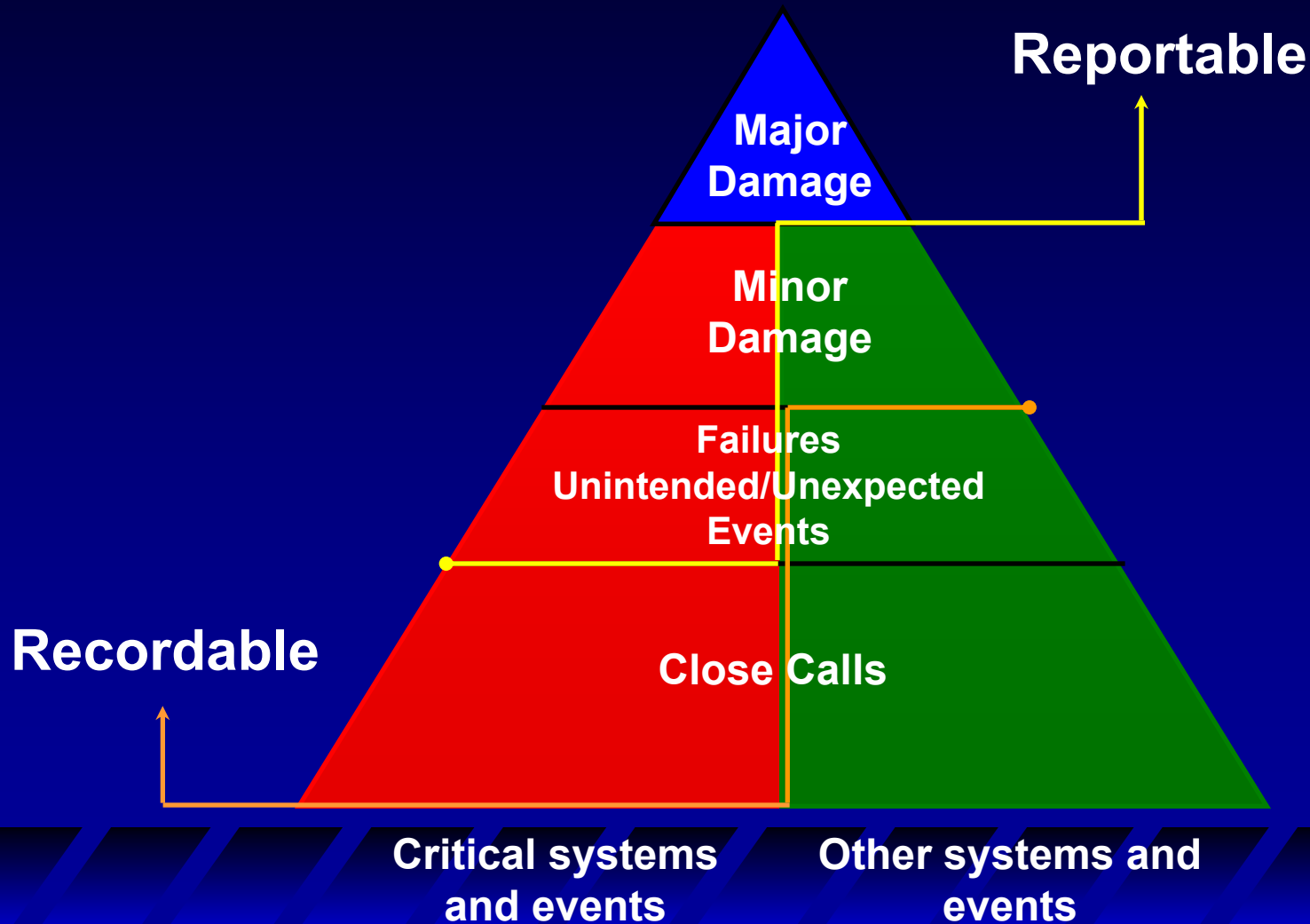
# Team Mission

- ◆ Identify and recommend changes to clarify and improve the process of reporting incidents to the USCG and the MMS.

# Proposed Reporting Model for Personnel Incident/Casualties on the OCS



# Proposed Reporting Model for Events/Property Damage on the OCS





# Recommendations for USCG/MMS

## Team's Consideration

- ◆ Include stakeholders in the process
- ◆ Use - wherever possible - common definitions for like terms
- ◆ Strive for a process that requires single agency reporting
- ◆ Explore the value of a single form with multiple data needs
- ◆ Investigate alternate reporting methods and timing for reports
- ◆ Clarify and identify who is responsible for initiating the reports



# **Incident Reporting Historical Perspective**

- Industry has been consistent in our comments over a long period of time
- We still endorse the recommendations of the NOSAC Subcommittee



# **Incident Reporting Organization of Comments**

- Cover Letter
  - General comments and recommendations
- Incident Reporting Table
  - Side by Side USCG (current and proposed Subchapter N) and MMS proposed regulations with OOC comments and proposed language



# **Incident Reporting Organization of Comments**

- Appendix A
  - OOC comments on MMS Table in 250.188, broken into oral notification and written reports
- Appendix B
  - OOC Comments on MMS Table in 250.189
- Appendix A-1
  - OOC suggested oral notifications and written report requirements in lieu of MMS Tables in 250.188 and 250.189





# **Incident Reporting Organization of Comments**

- OOC comments on MMS posed questions
- White paper on medical privacy issues



# **Incident Reporting**

## **Review of Other Incident Reporting Regulations**

- DOT Regulations
  - 49 CFR 191 (Gas Pipelines)
  - 49 CFR 225 (Railroads)
  - 49 CFR 830 (NTSB-Aircraft)
- OSHA Regulations
  - 29 CFR 1904



# Incident Reporting Common Reporting System

- Adopt common terminology and definitions
  - Example
    - OCS Activity
      - USCG: *OCS activity* means any offshore activity associated with exploration for, or development or production of, the minerals of the Outer Continental Shelf.
      - MMS: *OCS activity* means any activity on the OCS associated with exploration, development, production, transporting, or processing of OCS mineral resources, including but not limited to, oil and gas.





# **Incident Reporting Common Reporting System**

- Oral or immediate reports for serious incidents should go to a common reporting system
  - Similar to reporting incidents to the NRC
  - Minimum amount of information required to be given
  - System should notify all required agencies





# **Incident Reporting Proposed Rulemaking**

- Very prescriptive
  - Limit reporting to those specific incidents in the rule versus a performance based system
  - Example: A grease fire in the kitchen would not have to be reported unless injuries beyond first aid occurred or damage exceeded \$25,000.
  - Example: It is not clear that you would have to report a person missing from the platform that no one observed going overboard or otherwise leaving the platform



# **Incident Reporting Proposed Rulemaking**

- Reporting scheme is very complex
  - 6 different reporting timeframes with a combination of oral reports, written reports, follow up reports
  - No other regulations examined had complex reporting requirements
  - Examples:
    - OSHA: Minimum oral reports, fill out Incident Report and Log, submit summary if requested
    - NTSB (aircraft): Oral report, written report if oral report not required
    - FRA (railroads): oral report, submit monthly report



# **Incident Reporting Proposed Rulemaking**

- Reporting scheme is very complex
  - 6 different reporting timeframes with a combination of oral reports, written reports, follow up reports
  - Example: Injury to one or more person
    - If hospitalized for more than 48 hours:
      - Oral Report Immediately to MMS and USCG
      - Written Report in 5 Days to MMS and USCG
      - Written Report in 60 Days to MMS
    - More than one person: If not hospitalized for more than 48 hours, but days away from work or restricted duty:
      - Written report in 12 hours to MMS
      - Written report in 5 days to MMS
    - One Person: If not hospitalized for more than 48 hours, but days away from work or restricted duty:
      - Written report in 15 days to MMS





# **Incident Reporting Proposed Rulemaking**

- No other regulations examined had complex reporting requirements
  - Using the same example for a single injury:
    - OSHA: Record incident on Incident Report and Log, submit annual summary if requested
    - NTSB (aircraft): Oral report
    - FRA (railroads): Record on report form, submit monthly



# **Incident Reporting Proposed Rulemaking**

- Problematic to provide the required notifications within the required timeframes
  - Example: Immediate oral notification of one or persons who are hospitalized for more than 48 hours within 5 days of the incident.
    - Don't know that this requirement will be met until either the 48 hours or 5 days has expired
    - What is purpose of immediate oral notification?





# Incident Reporting

## Oral Reports

- Limit to very serious incident types
  - MMS and/or USCG routinely plan to send an onsite investigation team immediately

Examples from other regulations

- OSHA: Employee death or in-patient hospitalization of 3 or more employees from a single incident
- FRA: Death of employee or passenger or injury to five or more individuals
- NTSB: Flight control system malfunction or failure



# **Incident Reporting Written Reports**

- Written reports should meet both MMS and USCG needs
  - Common report form or reporting elements
  - Common reporting timeframe
  - Should only be submitted once-agencies should share reports as needed



# **Incident Reporting Written Reports**

- Consider recording incidents and providing annual report or summary
  - Approach recommended by NOSAC
  - Similar to approach by other agencies
  - Data may be more complete and accurate than filing individual reports, particularly for property damage
  - Provides the agencies data needed for trend analysis in a concise manner





# **Incident Reporting Written Reports**

- Filing Mechanism
  - Multiple mechanisms should be allowed
    - Web-based
    - E-mail
    - Fax
    - Mail
    - Hand Deliver
  - Forms should be designed to be easily filled out and appropriate for the filing mechanism



# **Incident Reporting Written Reports**

- Electronic Filing Considerations
  - Not all locations have access to web-based systems
  - Communication systems may be non operational
  - Must be flexible, multiple platforms and communication systems
  - Verification system back to the operator that MMS has received the report
  - Resolve electronic signature issues
  - Must be simple and easy to use





# **Incident Reporting**

## **Use of Submitted Data**

- Not clear how the data will be utilized by MMS/USCG to improve offshore safety
- Industry has provided MMS with a lot of data under the voluntary Performance Measures program
  - How has that data been used?
  - What analysis has MMS completed?
- MMS and USCG should work together on data analysis so their efforts are not duplicated



# **Incident Reporting**

## **Use of Submitted Data**

- Injury reporting categories should follow OSHA requirements
  - Successfully used in the OOC Performance Measures voluntary reporting
  - Allows injury trends to be compared to other industries
  - Simplifies record keeping for companies that currently follow OSHA requirements



# **Incident Reporting Jurisdictional Issues**

- Lessees/Operators should be responsible for reporting facility incidents
- Vessel Owners/Operators should be responsible for reporting vessel incidents
- It is impracticable (if not impossible) for operators to gather and report incident details for another operator under our contractual relationships in a timely fashion





# **Incident Reporting**

## **Medical Privacy Issues**

- OOC's concern is for both current and proposed incident reporting
  - Is it legally permissible for contractors, sub-contractors and third parties to submit health information on individuals to lessees/operators, and then can the lessee/operator release the information to MMS or USCG?



# **Incident Reporting**

## **Medical Privacy Issues**

- HIPAA 1996
  - Public Law 104-191
  - 45 CFR 160-164 (HHS-OCR)
  - Compliance deadline—April 14, 2003
  - Covers several broad health insurance issues, but area of concern is the protection of medical records and other health information





# **Incident Reporting**

## **Medical Privacy Issues**

- Important Terms
  - Covered Entity
    - Health plans, health care clearinghouses, and health care providers who transmit health care information in an electronic form in accordance with the act
    - Lessees/operators/contractors are generally not covered entities
    - Information from medics and physicians **is** protected



# **Incident Reporting**

## **Medical Privacy Issues**

- Important Terms
  - Individually Identifiable Health Information (IIHI)
    - Information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual (45 CFR 160.103).
  - Protected Health Information (PHI)
    - In effect the same as IIHI ( 45 CFR 164.501)



# **Incident Reporting**

## **Medical Privacy Issues**

- Information from a Covered Entity is protected from release with a number of exceptions including:
  - 45 CFR 164.512 (a) allows for release of information required by law
  - 45 CFR 164.512 (l) allows for the release of information to comply with worker's compensation and similar laws
  - 45 CFR 164.508 allows for the release of information if a voluntarily release form is signed





# **Incident Reporting**

## **Medical Privacy Issues**

- In addition to HIPPA, state regulations are also a concern
  - State requirements are similar to HIPPA prohibiting the disclosure of information except under certain circumstances.
    - Chapter 773 of the Texas Health and Safety code
    - Louisiana Revised Statute 23:1127



# **Incident Reporting**

## **Medical Privacy Issues**

- OOC recommends that MMS and USCG carefully evaluate the medical privacy regulations and ensure that their incident reporting requirements are aligned with these requirements
  - Unrealistic to expect to get voluntary release forms in all cases
  - Very little case law in which to base interpretation of the regulation
  - Both civil and criminal penalties for violating privacy standards





# Incident Reporting

Questions and concerns from MMS and  
USCG about OOC's comments



# **Incident Reporting Desired Outcome**

- MMS postpone this rulemaking until MMS and USCG develops and implements a common reporting system including:
  - Consistent definitions
  - Consistent reporting requirements
  - Recognizes jurisdictional issues



# **Incident Reporting Desired Outcome**

- Even if MMS adopts all of our suggested language in our comments, we believe the rulemaking will still be flawed





# **Incident Reporting Desired Outcome**

- OOC remains convinced that a joint rulemaking effort between MMS and USCG that includes the involvement of the regulated stakeholders will generate the most effective incident reporting system
- OOC will participate with MMS and USCG in a cooperative effort to develop an incident reporting system